

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA**

**CYNTHIA MORRIS, as Special
Administrator of the Estate of Heather S.
Mattern, Deceased, and CYNTHIA
MORRIS, individually,**

Plaintiffs,

VS.

**CALIFORNIA MEDICAL PRODUCTS,
INC. and LAERDAL MEDICAL
CORPORATION, a foreign corporation,**

Defendants.

8:08CV72

ORDER

This matter is before the court on the defendants' joint motion (Doc. 26) to amend their answer to assert a statute of repose affirmative defense.

[Rule 15](#)(a)(2) of the Federal Rules of Civil Procedure provides that "[t]he court should freely give leave when justice so requires." The court may refuse to grant leave to amend a pleading "only where it will result in 'undue delay, bad faith or dilatory motive on the part of the movant, repeated failure to cure deficiencies by amendments previously allowed, undue prejudice to the opposing party by virtue of allowance of the amendment, [or] futility of amendment.'" *Dennis v. Dillard Dept. Stores, Inc.*, [207 F.3d 523](#), 525 (8th Cir. 2000) (quoting *Foman v. Davis*, [371 U.S. 178](#) (1962)). Delay alone is insufficient to deny a motion for leave to amend, and the party opposing the motion must show it will be unfairly prejudiced. *Id.*

Noting the plaintiffs' objections, the court finds that defendants' motion was timely filed, was not unduly delayed, and the proposed amendment will not cause undue prejudice to the plaintiffs at this point in the proceeding.

IT IS ORDERED:

1. Defendants' Joint Motion to Amend Answer [26] is granted. Defendants shall serve the amended pleading on or before July 10, 2008.
2. Plaintiffs' Motion in Opposition [34] is denied.

DATED June 24, 2008.

BY THE COURT:

**s/ F.A. Gossett
United States Magistrate Judge**